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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LABIB RIACHI Plaintiff, **v.** **THE PROMETHEUS GROUP, FIRST CHOICE FOR CONTINENCE, INC. AND JANE DOES 1-4 AND JOHN DOES 1-4** Defendants.	:	**CIVIL ACTION NO.** **HONORBALE** **COMPLAINT**

Plaintiff Labib Riachi ("Dr. Riachi") , by way of Complaint against Defendants The Prometheus Group, ("Prometheus") First Choice for Continence, ("First Choice"). and Jane Does 1-4 and John Does 1-4, says:

THE PARTIES

1. Dr. Riachi is an individual who resides at 319 Massachusetts Street, Westfield, New Jersey.

2. Prometheus is, upon information and belief, a Delaware corporation with its principle place of business at One Washington Street, Dover, New Hampshire.

3. First Choice is, upon information and belief, a Corporation of the State of Kansas with its principal place of business at 2919 Marlatt Avenue, Manhattan, Kansas.

JURISDICTION AND VENUE

4. Jurisdiction and venue with regard to the Complaint are proper. The Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 as the parties are citizens of different states and the matter in controversy exceeds $75,000.00.

5. This Court has jurisdiction over the Defendants. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 as Dr. Riachi is located in this vicinage.

BACKGROUND

6. This matter is brought by Dr. Riachi to rectify a major fraud, among other things, committed against him by the Defendants. As set forth below, the conduct of the Defendants caused Dr. Riachi to incur millions of dollars of damages. The conduct of the Defendants has caused irreparable harm to Dr. Riachi and his practice.

7. Dr. Riachi is a pioneering doctor in several ways. He had decided to dedicate his life to assisting others in need of medical care. For many of his patients, he has performed his services without requesting a fee. Dr. Riachi has also performed new and unique medical procedures that have aided and changed the lives of many of his patients.

8. Dr. Riachi has received many awards and certifications in recognition of his service to his patients. These include:

- Certificate of appreciation award from the Philadelphia College of Osteopathic Medicine, July 2015
- Leadership in medical education award from the New York College of Osteopathic Medicine
- New Jersey top doctors awards 2014
- New Jersey top doctors award 2015
- Vitals patients choice award 2014
- St Clare's health system 2014 top doctors recognition award
- Top OB/GYN award 2010 and 2011, by the Consumers Research Council of America
- Patient choice award 2009
- Top doctors New Jersey award as chosen by nurses 2010 , New Jersey Monthly
- Patient choice awards 2008
- America's top of Obstetricians and Gynecologists award 2012 by the Consumer Research Council of America
- International Association of Obstetricians and Gynecologists top OB/GYN award 2016
- Certificate of commendation for providing exemplary patient care by Cathedral Healthcare System
- Special excellence in endoscopic procedure award by the American Association of Gynecologic Laparoscopists 1999
- Berlex Laboratories residency teaching award.

9. Most recently, Dr. Riachi was recognized by Trinitas Regional Medical Center for performing his 1,000th Robotic Surgery. This is a tremendous milestone to reach and further shows Dr. Riachi's commitment to his patients.

11. In the course of his practice in providing care to his patients, Dr. Riachi relied upon the Professionals and medical suppliers that he engaged to give him proper guidance and advice. Two such professional suppliers were the Defendant Prometheus and the Defendant First Choice.

12. From the time Dr. Riachi first engaged the Defendants and contracted for their services, he relied upon the Defendants to provide him with correct advice as to billing procedures and the acceptable use of the medical devices that he acquired from Prometheus.

13. Dr. Riachi appropriately placed his trust in the Defendants as they were professionals that he engaged to provide him with proper advice. However, as Dr. Riachi later learned, he was being defrauded by the Defendants who gave him false and erroneous advice. Dr. Riachi was accused by the Federal Government of improperly billing for Medicare reimbursements when all Dr. Riachi did was rely upon the advice of Defendants. As a result of the conduct of the Defendants, Dr. Riachi was immeasurably damaged. Dr. Riachi was forced to pay millions of dollars back to the United States government due to the conduct of the Defendants. This is solely because Dr. Riachi relied on the professional advice of the Defendants. Dr. Riachi is before this Court to obtain redress for the wrongs committed by Defendants.

FACTS COMMON TO ALL COUNTS

DR. RIACHI AND PROMETHUS AND FIRST CHOICE

14. Dr. Riachi is an urogynecologist and the head of the Center for Advanced Pelvic Surgery ("CAPS"), which is located at the Trinitas Regional Medical Center in Elizabeth, New Jersey ("Trinitas") with a satellite location in Westfield, New Jersey. He is also the Director of Urogynecologist and Robotic Surgery, and Chair of the OB/GYN Department at Trinitas.

15. Dr. Riachi's practice focuses primarily on treating women who suffer from various forms of pelvic floor disorders, such as stress urinary or fecal incontinence, pelvic floor prolapse, urinary urgency, and pelvic pain. Dr. Riachi believes strongly in treating women

with pelvic floor dysfunction in the most minimally invasive ways. Towards that end, Dr. Riachi offers a wide spectrum of services for the diagnosis and treatment of pelvic floor dysfunction. However, when non-surgical options are either not appropriate or are unsuccessful, Dr. Riachi regularly preforms various types of surgery on women with pelvic floor dysfunction.

16. In the mid-2000's, Dr. Raichi became one of the early adopters of pelvic floor physical therapy ("PTF"), a treatment that is more aggressive than traditional muscular exercise but is not as invasive as surgery. PTF engenders various forms of treatment, including electronic stimulation, diagnostic testing, and physical therapy. Dr. Riachi began offering PTF in approximately 2006 after he purchased a pelvic muscle rehabilitation system from Prometheus.

17. In conjunction with his purchase of Prometheus equipment, both Prometheus representatives, as well as representatives from First Choice for Continence, Inc., a vender engaged by Prometheus to provide training, visited Dr. Raichi's office and advised Dr. Riachi that both he and his staff were properly trained regarding the use of the equipment.

18. Significantly, Dr. Riachi purchased the equipment from Prometheus and he and his staff were trained by Prometheus and First Choice each time. And, each time they were given the same advice by Prometheus and First Choice.

19. Dr. Riachi was given erroneous and false advice by both Prometheus and First Choice. Prometheus, through its vender First Choice, presented themselves to Dr. Riachi, and other providers, as experts on billing and reimbursement issues. Specifically, First Choice represented that its Vice President, Debbie Folkerts, was a Nurse Practitioner, credentialed

and uniquely qualified with a specific expertise in non-surgical treatment. First Choice and Prometheus failed to provide proper reimbursement advice.

20. Prometheus First Choice failed to properly advise Dr. Riachi regarding the supervision requirements and provided false advice regarding requirements relating to licensed personnel. Prometheus and First Choice gave Dr. Riachi false advice and continued to provide false reimbursement advice to providers.

21. When Dr. Riachi began providing PFT services in 2006, it was a relatively new and evolving treatment option. There was little experience within the medical community from which Dr. Riachi could draw upon. Thus, he reasonably and completely relied on Prometheus and First Choice for their expertise.

22. During this training, the Prometheus representatives advised that the most effective way to use the system was to perform each of the three standard functions during the PFT sessions. These functions included: (1) electronic stimulation; (2) diagnostic testing; and (3) physical therapy. In 2008, Prometheus representatives, through First Choice, returned to Dr. Riachi's office to provide additional training for new staff which was substantially identical to their initial training session. These vendors failed to provide critical information, such as supervision requirements. In the case of licensing requirements, Prometheus and First Choice provide affirmatively wrong and incorrect advise that played a significant role in the submission of the claims that followed.

23. The professionals upon whom Dr. Riachi reasonably relied never brought this supervision issue to his attention. Both of these entities implicitly or explicitly confirmed Dr. Riachi's understanding there was adequate supervision so long as a Physician, Physician's

Assistant, Nurse Practitioner, or midwife, was located either in the office suite or in the immediate vicinity

24. In 2010, the United States Justice Department began an investigation of Dr. Riachi. Over the course of the next several years that investigation continued. In 2016, after applying all of the pressure of the United States Government on Dr. Riachi, he was forced to settle with the Justice Department by paying a reimbursement amount of several million dollars.

25. Dr. Riachi, however, did nothing wrong and relied appropriately on the guidance and advice of the professional Defendants Prometheus and First Choice.

MISREPRESENTATIONS VERIFIED

26. Prometheus employees have made representations in writing and orally to Dr. Riachi asserting that their advice was correct. Dr. Riachi has recordings and statements from Prometheus that contain representations from Prometheus and First Choice that the advice given to Dr. Riachi was correct. Emails were provided to Dr. Riachi by Prometheus and First Choice that their advice was correct. However, there statements were false and fraudulent and it is now clear that the advice given to Dr. Riachi by Prometheus and First Choice was false.

FIRST COUNT
(Breach of Contract)

27. Dr. Riachi repeats and makes a part hereof the allegations contained in Paragraphs 1 through 26.

28. As a result of the conduct described herein, Defendants have breached the Agreement between them and Dr. Riachi.

29. As a result of this breach, Dr. Riachi has been and continues to be harmed and has suffered damages.

SECOND COUNT
(Implied Covenant)

30. Dr. Riachi repeats and makes a part hereof the allegations contained in Paragraphs 1 through 29.

31. Implied in the Agreement between Dr. Riachi and Defendants is a covenant that Defendants would not do anything to deprive Dr. Riachi of the benefit of the Agreement between them.

32. By committing the acts alleged herein, Defendants have breached the implied covenant of good faith and fair dealing in the Agreement between them and Dr. Riachi, and have deprived Dr. Riachi of the benefit of his bargain.

THIRD COUNT
(Consumer Fraud Act)

33. Dr. Riachi repeats and makes a part hereof the allegations contained in Paragraphs 1 through 32.

34. Defendants' conduct in, among other things, making false representations to Dr. Riachi regarding the use of the equipment, billing procedures and appropriate codes violated the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

FOURTH COUNT
(Fraud)

35. Dr. Riachi repeats and makes a part hereof the allegations contained in Paragraphs 1 through 34.

36. The statements made by Defendants were made with the intent that Dr. Riachi would rely upon them.

37. The statements made by Defendants were relied upon by Dr. Riachi in agreeing to use Defendants' equipment and services.

38. Without limitation, the statements made by Defendants as to the billing proceedings, appropriate codes and use of the equipment were false.

39. The false statements made by Defendants were intentionally, recklessly or negligently made.

40. Dr. Riachi relied on those statements to his detriment and, as a result, has been and continues to be harmed.

FIFTH COUNT
(Negligent Misrepresentation)

41. Dr. Riachi repeats and makes a part hereof the allegations contained in paragraphs 1 through 40.

42. The representations made by Defendants to Dr. Riachi were recklessly and negligently made.

43. Those representations were made to Dr. Riachi with the intent that he would rely on them.

44. Dr. Riachi appropriately relied upon the representations of the Defendants and those representations were recklessly and negligently false.

45. As a result of Dr. Riachi's reliance on the representations, he was harmed and continues to be harmed.

SIXTH COUNT
(Negligence)

46. Dr. Riachi repeats and makes a part hereof the allegations contained in paragraphs 1 through 45.

47. The Defendants had a duty of care to Dr. Riachi to provide correct advice to Dr. Riachi. By providing false and incorrect advice to Dr. Riachi, Defendants breached their duty of care to Dr. Riachi.

48. As a direct and provide result of Defendants' negligence as stated above, Dr. Riachi has been and continues to be damaged.

49. Dr. Riachi has suffered damages and is likely to continue to suffer harm and damages.

SEVENTH COUNT
(Unjust Enrichment)

50. Dr. Riachi repeats and makes a part hereof the allegations contained in Paragraphs 1 through 49.

51. In performing under the Agreement with Defendants, Defendants received the benefits of Dr. Riachi's payment but did not reciprocally benefit Dr. Riachi.

52. Defendants have been unjustly enriched by the misappropriation of the Dr. Riachi's payment

WHEREFORE, Plaintiff Labib Riachi demands judgment in his favor and against the Defendants for consequential damages, punitive damages, treble damages, attorney's fees and costs.

RONALD T. NAGLE, P.C.
Attorney for Plaintiff Labib Riachi

Dated: May 16, 2016

By:______________________
Ronald T. Nagle